

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 5, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Mike Sprague, Vice Chairman (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 331, 2/2/1999
SB 332, 2/2/1999
Executive Action: SB 304; SB 289
SB 107; SB 326
SB 263; SB 307

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SB 263

Motion: SEN. COCCHIARELLA moved that SB 263 DO NOT PASS.

Discussion: SEN. HERTEL mentioned that SEN. HOLDEN had put some amendments on the bill, just write-in things.

Motion/Vote: SEN. MCCARTHY moved that SB 263 BE TABLED. Motion carried 4-1 with Berry voting no.

EXECUTIVE ACTION ON SB 304

Motion: SEN. BERRY moved that SB 304 DO PASS.

Discussion: Mr. Campbell explained the amendments **EXHIBIT (bus29a01)**. There is no 4-A in the bill. Striking "may" and inserting "shall" was desired by the agents against the bill so that the commissioner would make the rule.

Motion/Vote: SEN. MCCARTHY moved that SB 304 BE AMENDED. Motion carried unanimously. 5-0

Motion/Vote: SEN. MCCARTHY moved that SB 304 DO PASS AS AMENDED. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 289

Motion: SEN. MCCARTHY moved that SB 289 DO PASS.

Motion: SEN. MCCARTHY moved that SB 289 BE AMENDED.

Discussion: Mr. Campbell explained the amendments **EXHIBIT (bus29a02)**. SEN. DOHERTY said that he was in favor of the amendments. He had worked with some of the telephone people. The biggest thing is that Subsection 6 is completely taken out. The other change on page 2 of the amendments under #10, "and in boldface type" was taken out which is what the telephone companies don't want. U.S. West actually compiled these amendments.

Vote: Motion to amend carried unanimously. 5-0

Motion/Vote: SEN. ROUSH moved that SB 289 DO PASS AS AMENDED. Motion carried unanimously. 5-0

EXECUTIVE ACTION ON SB 107

Motion: SEN. COCCHIARELLA moved that SB 107 DO PASS.

Motion: SEN. MCCARTHY moved that SB 107 BE AMENDED **EXHIBIT (bus29a03)**.

Discussion: Mr. Campbell explained that most were just clean-up or clarification amendments.

Vote: Motion that SB 107 BE AMENDED carried unanimously. 5-0

Motion/Vote: SEN. ROUSH moved that SB 107 DO PASS AS AMENDED. Motion carried unanimously. 5-0

{Tape : 1; Side : A; Approx. Time Counter : 9 - 22.9; Comments : SB 275 was discussed during this time frame.}

EXECUTIVE ACTION ON SB 307

Motion: SEN. BERRY moved that SB 307 DO PASS.

Discussion: SEN. VICKI COCCHIARELLA moved to amendment this bill to take out New Sections, Section 2 and Section 3.

Vote: Motion that SB 307 BE AMENDED carried unanimously. 5-0

Discussion: SEN. COCCHIARELLA was concerned about the looseness of the language on line 28 "prohibited lottery games include, but are not limited to those representing" and what is "sports betting". Mr. Campbell tried to explain to the best of his ability but he was not entirely sure.

Substitute Motion/Vote: SEN. MCCARTHY made a substitute motion that SB 307 BE TABLED. Substitute motion carried unanimously. 5-0

EXECUTIVE ACTION ON SB 326

Motion/Vote: SEN. COCCHIARELLA moved that SB 326 DO PASS. Motion carried unanimously. 5-0

{Tape : 1; Side : A; Approx. Time Counter : 36.5}

HEARING ON SB 332

Sponsor: SENATOR E.P "PETE" EKEGREN, SD 44, CHOTEAU

Proponents: Geoff Feiss, MT Telecommunications Assoc.
Mike Strand, MT Independent Telecommunications
Systems

Opponents: Tony Herbert, Administrator, Information Services
Div.
Karen Strege, MT State Library
Bruce Newell, President Elect, MT Library Assoc.
Lois Fitzpatrick, MT Library Assoc.
Inga Nelson, MEA/MFT
Joyce Scott, Deputy Commissioner, Higher Education,
Montana University System.
Gordon Morris, Montana Assoc. of Counties
Mike McCabe, Chief of Staff, MT Army National Guard

Opening Statement by Sponsor:

SENATOR E.P. "PETE" EKEGREN, SD 44, CHOTEAU. I am presenting a bill for the telecommunications association which prohibits government competition with private telecommunication providers. The bill will prevent state or local government entities from providing telephones, cable or Internet services that compete with the private telecommunication providers. It specifically does not exempt state or local from providing telecommunication service for their own use. It grandfathers the state video conference network, METNET. The state and local governments have or are building government owned and operated telecommunication networks at tremendous waste of taxpayers' money. There are some negative consequences of government competition. One is it erodes your tax base and the government gets free money which is taxpayers' money. There are several examples of the negative aspects of government telecommunication services. One is the Iowa Communications Network. ICN was initially approved by the Iowa State Legislature to provide distance learning and education capabilities. It's initial price tag was set at \$73 million. It has knocked off over \$200 million and employees 120 people. It costs \$50 million a year. It is so expensive that the state has applied for federal universal service support and is trying to recover its cost by selling Internet access to state employees, library patrons, teachers, students and others at their homes. California Net is being disbanded after many years and many millions of dollars. They are replacing this network with a privately owned and operated network. The government infrastructures have proven costly and have not kept pace with the rapid development in telecommunications technology. I urge the committee Do Pass on this bill.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Proponents' Testimony:

Geoff Feiss, MT Telecommunications Assoc. He presented his testimony and handed in the written copy **EXHIBIT (bus29a04)**.

Mike Strand, MT Independent Telecommunications Systems. Geoff has done an outstanding job of expressing the reasons behind the bill, so I will not reiterate those. We support the underlying philosophy that taxpayer dollars should not be used to compete with private industry. We understand there are some concerns and we would be happy to listen to those concerns and see what can be done. Thank you.

{Tape : 1; Side : B; Approx. Time Counter : 9.5}

Opponents' Testimony:

Tony Herbert, Administrator, Information Services Division. He presented his testimony and handed in the written copy **EXHIBIT (bus29a05)**. He also had a handout **EXHIBIT (bus29a06)**.

Karen Strege, State Librarian. She presented her testimony and handed in the written copy **EXHIBIT (bus29a07)**.

Bruce Newell, Network & Public Services Librarian, Lewis & Clark Public Library. He presented his testimony and handed in the written copy **EXHIBIT (bus29a08)**.

{Tape : 1; Side : B; Approx. Time Counter : 22.6}

Lois Fitzpatrick, MT Library Assoc. She presented her testimony and handed in the written copy **EXHIBIT (bus29a09)**.

Inga Nelson, MEA/MFT. We rise in opposition to this bill for a number of reasons that have already been presented. It has been said that the intent of this bill is not to affect libraries or METNET, but as it is written this is not clear. We urge you to vote Do Not Pass.

Joyce Scott, Deputy Commissioner, Higher Education/Montana University System. She presented her testimony and handed in the written copy **EXHIBIT (bus29a10)**.

Gordon Morris, Montana Assoc. of Counties. I echo the comments of Tony Herbert. There are too many questions concerning this bill and urge a Do Not Pass.

Mike McCabe, Chief of Staff, Montana Army National Guard. He presented his testimony and handed in the written copy **EXHIBIT (bus29a11)**.

{Tape : 1; Side : B; Approx. Time Counter : 32.6}

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked **Karen Strege** if she could work with the sponsor, specifically on lines 22 and 23. **Ms. Strege** said that she didn't have a suggestion right now but she would be happy to work with the sponsor or committee members to make those amendments. **SEN. MCCARTHY** asked if that was the only section that hurt the libraries in the state. **Ms. Strege** said that she would like to look at the next section in total before knowing how to answer that question. But again, she would be happy to work with the sponsor.

SEN. DALE BERRY asked **Geoff Feiss** if his intent was not to shut down certain entities of the government, where does that intent go? All think this will never happen, but the threat is there. Does he see any of these concerns or programs that are established for university students, etc. that can't be dealt with? **Mr. Feiss** said there are gray areas and some are getting a little darker than gray. This bill is not intended to thwart any network activities that take place by, for and within state government purposes. Some of those gray areas are on the top of the slippery slope, such as long distance and Internet services to dormitory residences. He had spent some time in Michigan and know there are apartment buildings on and off campus where private owners of those buildings would have high speed lines going right into the buildings and sell their apartments to students at five times the rent. Is offering long distance or telephone for Internet service in a college dorm private or public? Mid-Rivers is bringing Internet service to Dawson College (a private college) this year. Again, that is on the top of the slippery slope. Kootenet was mentioned and that is a government-owned network in the Libby area. There are private providers up there. The National Guard's concerns are wrapped up in this legislation and if they are, that is certainly not the intent.

SEN. BERRY asked **Mr. Herbert** the same kind of question. It seemed to the Senator that these programs could be blended in to cover the concerns of this bill. Even though the intent is not there, it could step over some lines. Do you feel these concerns could be addressed in this bill? **Mr. Herbert** said that some amendments could be put together to work through this. The problem that may come to be, is what is it going to be like in two years. This industry moves and changes its pace so quickly. To the issue of dormitories, this must be discussed. When that was implemented in 1985, the industry did talk a lot with us about it, and rules went forward. They had opportunity to comment, and dormitory services have been interpreted in Montana as being a responsibility for the universities to provide. If

you ask them how they feel about what goes on in dormitories, it is a key part of the mission of delivering education. Looking at Kootenet, it was completely unpredicted. It is a community network--not private. It is the local government, the school districts, Plum Creek, the banks and the community that bound together to have an Internet capability because there were no capabilities in that area other than AOL. We could take stabs at those things, but if it's broken, let's fix it. If it isn't broken, why are we doing this? Evidently this is not addressed to the National Guard or libraries. Language may be unclear, but that could be fixed. I do think it will be difficult.

{Tape : 2; Side : A; Approx. Time Counter : 0}

SEN. COCCHIARELLA asked **Mr. Feiss** if they had gone too far in the bill with the shutting down of certain entities. **Mr. Feiss** said "no," they did not intend to get rid of government services. This bill exempts state telecommunications network services which are provided to state facilities or government facilities, local or state. Look at Section 2, Subsection 4: "Governmental entity" means a department, division, and any political subdivision of the state." Then look at Section 1, Subsection 3, "This section does not apply to a governmental entity. . . .as those provided under 20-32-101."

SEN. COCCHIARELLA said that if this bill is prohibiting the use of the government telecommunications system to bring news to the public, then this is not good in my mind. **Mr. Feiss** said that he had mentioned Vision Net with 88 video conference sights, full motion video, ATM technology and is available in 88 communities. This is available to health care facilities, education library colleges and universities. If the state wants to spend taxpayer money to duplicate what Vision Net already does, or to provide Internet services to the public, then this bill would prohibit that.

SEN. COCCHIARELLA said the exemption does not allow any government entity, which to her includes school districts or the university system for providing anything to the public. It says: "does not apply to a government entity, political subdivision or special use district providing telecommunications to itself", therefore the government couldn't provide anything to the public under these words in this bill. That is how she reads the words. **Mr. Feiss** said "yes," except the libraries have a very good point. If he were a patron and walked into the library and wanted to access the Internet, that is a public service and is something they already do. This bill does not intend to prevent that. But if you take the next step and go the Iowa direction and say if he has a library card and he can access the library's

Internet system from home with his library card, then that is definitely and directly competing with private industry.

SEN. COCCHIARELLA said this is an anti-future bill. If all these cheaper vehicles for providing education, medical care, etc. are taken away, I don't think this is good. I don't agree with government competing with the private sector, but I don't agree with cutting off those kinds of ways to cut taxes for people who need the services in a rural setting. **Mr. Feiss** replied they questioned the hypothesis of that. If the government is providing these so-called public services, what is the real cost to taxpayer dollars when you take traffic off private networks, increasing the investment and reducing the revenues of private industry to provide a ever-growing, high technology service. This is a preventive bill.

{Tape : 2; Side : A; Approx. Time Counter : 4.5}

SEN. BEA MCCARTHY asked **Mr. Feiss** if the dormitories were the impetus behind this bill. **Mr. Feiss** said "no," actually there are two impetuses. One is national, with state and local networks popping up across the country. They are costly and generally fail. The second one concerns jobs and incomes.

SEN. JOHN HERTEL asked **Mr. Feiss** if he felt that they could bring the services that are now being provided for the libraries, the national guard, etc. **Mr. Feiss** said "yes."

SEN. HERTEL asked **Mr. Herbert** the same question. **Mr. Herbert** said that the services that are provided today are provided by the industry and not by all the companies that are represented by **Mr. Feiss**. The cadre of the industry is all of these local entities and the state government which buy these services. If this bill were to prevail and some of the services, like dormitoris were to go away, it would cost the universities more than what they pay today to offer those services. It would cost the students more. All these things can be done. The industry does that for us today. We aggregate and through that we end up saving a lot of money to the state and to the citizens.

Closing by Sponsor:

SEN. EKEGREN closed. Thank you for a good debate. I am sure that the issues can be cleared up with an amendment or two. One thing that we need to safeguard is whenever possible is government infringement into private enterprise. Private enterprise can generally do it better and more economical than government.

{Tape : 2; Side : A; Approx. Time Counter : 7.3}

HEARING ON SB 331

Sponsor: SENATOR DEBBIE SHEA, SD 18, BUTTE

Proponents: Matt Krsul, Director, MT Powersports
Glenn Middlestead, Helena Cycle Center
Cliff Gullett, Team Bozeman Motorsports

Information Testimony: Dean Roberts, Dept. of Transportation
Brenda Nordlund, Dept. of Justice
Annie Bartos, Dept. of Commerce
Ken Hoovestad, MT Snowmobile Assoc.

Opponents: None

Opening Statement by Sponsor:

SENATOR DEBBIE SHEA, SD 18, BUTTE. As you may recall, this bill was just an idea two years ago. For two years, the bill has been looked at and discussed. I now present to you **SB 331**. I want to thank Bart Campbell for his patience as he rewrote this bill several times. This bill would have water craft, snowmobile and off-highway vehicle dealer registration requirements fall in line with those of the automobile industry. Sections 1, 2 and 3 of the bill address this issue. This is a consumer protection bill. It is also a franchise protection bill. This gives some security to small businesses.

Proponents' Testimony:

Matt Krsul, Director, Powersports Dealers Assoc. Our association has approximately 50% of all the known dealers in the State of Montana. The dealers are concerned about their ability to do business because of the attitudes of the manufacturers. Another concern is non-authorized dealers who sell our product. Our products are becoming very popular and very expensive. I believe we are on line with the automobile industry as far as expenses that the consumers pay. We would like our industry to be on a par with the auto industry so that the dealers would have to have a facility, a service department and that includes being bonded by the state. At this point, that is not required. The manufacturers in the years that I have been in this business,

want to run our business. They tell us the number of products we have to buy from them, the models we need to buy, etc. If this bill is passed it would offer us the same protection that the automobile and RV people have.

Glenn Middlestead, Helena Cycle Center. I have been a dealer for 20 years. From the beginning we have had a volatile relationship with the manufacturers. Part of this bill is obviously to benefit the dealers but there are benefits for the consumers. We want to have a good business, hire more people, etc. Right now, a dealer can set up anywhere, anytime and they have no real responsibility to the consumers for what they are buying. We do feel that the manufacturers should not be able to tell us what to buy, how much to buy and when to buy. And we have no recourse. We must sign the order and hope to make it through with what is coming in or give in or up. So this bill will have short range and long range effects and will be good for everyone.

Cliff Gullet, Team Bozeman Motorsports. Our business is expanding; we do approximately 540 units a year and \$3.5 million gross income. We have 20 employees. To keep that up, we need to be able to run our business without the dictates of the manufacturers. For example, Seadoo just sent us a letter after we had studied what we should order. They said that what we had ordered, we can't have and they want to give us some holdover product from last year. If we don't take that 1998 model stuff, then we don't qualify for the program that we had already qualified for several months ago. They give us one set of rules one month and three months later they change the rules on us. Kawasaki is doing the same thing. They have nine different models and in Montana we sell three of those nine. They try to make us take the stuff that we know won't sell in Montana. Polaris does the same thing. Last year when we ordered, they put our order up by 10% and said we had to buy 67 units and they decided what 75% of those units would be and we could decide on 25%. We know what sells in our area but they just try to get rid of the things they are having trouble selling and want to make us take those units. So we get stuck with things that just don't sell. With this bill, we hope this will help us out and at the same time will be better for our consumers.

Opponents' Testimony: None

Information Testimony:

Dean Roberts, Administrator, Motor Vehicles, Department of Justice. We are the ones that administer dealer law. If you have any questions, Brenda Nordlund, Dept. of Justice attorney is here and would be able to answer any questions you might have.

Annie Bartos, Chief Legal Counsel, Department of Commerce. I oversee the Consumer Affairs Office of the Department. We applaud this bill as an effort to protect consumers in the state and to assist small businesses. The section of the bill that pertains to the Dept. is Section 10. That would add ATV's, the snowmobiles and boats to the present "lemon law" that are in the state, The New Vehicle Warrantee Act. During the last legislative session, Representative Dan Harrington introduced a bill to provide a mechanism to fund the "lemon law" program through the Department of Commerce by collecting \$1 on all new vehicles. That bill passed and established a fund to operate the program. The problem that the Department sees with Section 10 is that there is not a funding mechanism to operate a "lemon law" program, and we would assume that there would be a number of consumers who have purchased these power sports machines who would need this arbitration process. We just want to bring this to your attention.

Ken Hoovestall, MT Snowmobile Assoc. I would like to explain why we are staying neutral on this bill. It is not that we don't support what they are doing. The manufacturers are very good to us and we don't want to raise any red flags on their behalf. I do have a couple of concerns. On page 3, line 7 and on page 5, line 9 addresses bonding. We are not sure if the bonds are really needed at all. One of their reasonings was to prohibit backdoor dealers, etc. The franchise agreements under this act would take care of those concerns. On page 13, line 21, it talks about warranty periods of no longer than two years. That should be changed to read two years or whatever the manufacturers put on for their machines. For example, Yamaha has three year warranties. We wouldn't want manufacturers to interpret this law to say they would only have to honor the warranty for two years.

{Tape : 2; Side : A; Approx. Time Counter : 24.8}

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked **Matt Krsul** if on page 2, line 27 and 28, that was put in to help the dealers on warranties from backyard dealers. **Mr. Krsul** said yes. **SEN. MCCARTHY** then asked how the people who are currently working out of their home or wherever would be taken care of with the passage of this bill. **Mr. Krsul** said that when the licensees are renewed annually at the first of the year, it would be at that time they would have to prove their facility, etc.

SEN. GLENN ROUSH asked **Brenda Nordlund** if the word "dealer" could mean automobile dealer. **Ms. Nordlund** said yes. When you talk about the sections of the bill that basically amend current, new

motor vehicle dealer laws, you expand it to apply to the power sports. When you see the word "dealer", it will be expanded to the power sports and the current law through the motor vehicle dealer. **SEN. ROUSH** said that in the eastern part of the state many automobile dealers have power sports vehicles on their lots. Do those people as an automobile dealer have to get re-licensed as a recreational dealer. **Mr. Nordlund** said yes they would. Typically, they already have dealer statutes that apply to these sports vehicle dealers.

SEN. VICKI COCCHIARELLA asked **SEN. SHEA** if she could address the bonding issue, the warranty period and the lemon law. **SEN. SHEA** said that she had visited with Mr. Hoovestall about the bonding. If the dealers want to fall in line with the automobile association then they would have to comply with that. The power sports dealers felt that it would be worth it to go ahead and have one, two or three bonds. In regard to Section 10, they would be amenable to remove that section. The warranty issue would be taken care of because it is in Section 10 also.

SEN. COCCHIARELLA asked **Mr. Roberts** the same questions. **Mr. Roberts** said that other kinds of dealers only use one bond and we accept one bond. This could be amended and have one bond for \$5,000 to cover all three of these kinds of power sports vehicles. One other issue with the bond is the bond doesn't really apply to the same consumer questions that the Department of Commerce would have. The bond applies to such things as when the dealer is violating the law in relationship to how he sells the vehicle. The bond doesn't really have to do with whether the vehicle runs or not.

SEN. DALE BERRY asked **Matt Krsul** if his association covers the majority of the dealers. **Mr. Krsul** said yes. They have talked to almost all of the dealers and most of them agree with this bill.

SEN. JOHN HERTEL asked **Mr. Hoovestall** if he was reluctant to put the power sports dealers on the same level of the automobile dealers. **Mr. Hoovestall** said that they certainly did have legitimate concerns and he did stand in support of them.

{Tape : 2; Side : A; Approx. Time Counter : 38.9}

Closing by Sponsor:

SEN. SHEA closed. I have a letter **EXHIBIT (bus29a12)** that I would like to distribute from the See-Doo Dealer. (She read the letter.)

This is an important piece of legislation and thank you the good hearing.

EXECUTIVE ACTION ON COMMITTEE BILL

Ms. Annie Bartos, Chief Legal Counsel, Department of Commerce presented a petition to the committee to carry a committee bill and explained the reasons for the request **EXHIBIT (bus29a13)**.

Motion/Vote: SEN. COCCHIARELLA MOVED TO DRAFT A COMMITTEE BILL TO ADDRESS THE ISSUES OF MAUSOLEUMS AND COLUMBARIUMS AND RE-INACT THE MCA SECTIONS 35-21-101 THROUGH 35-21-713 THAT WERE DELETED IN THE LAST LEGISLATIVE SESSION. Motion carried unanimously. 5-0

ADJOURNMENT

Adjournment: 11:20 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus29aad)